



# HELSINKI COMMISSION REPORT

February 28, 2020

## IN BRIEF

### Restrictions on Civil Society in Hungary

*Then came an NGO [non-governmental organization] law that requires groups like mine – groups that are trying to affect public opinion and public policy—to register and publicly identify themselves as ‘foreign agents’ on the preposterous assumption that if we accept even a kopeck of foreign funding it must mean that we are beholden to some foreign master. And if we refuse, we face real prison terms... I don’t know whether the F.S.B. (the new KGB) actually intends to lock up human rights activists as traitors. But I am absolutely certain they mean to send a signal across the country that we should all re-grow our forgotten Soviet instincts of fear and wariness of foreigners—and that includes ‘foreign’ ideas about freedom and democracy—and that officials should feel free to use the threat of criminal charges to keep their critics in line.*

— Lyudmila Alexeyeva on the adoption of Russia’s “foreign agent” law, February 2016<sup>1</sup>

Since returning to power in 2010, Viktor Orban has systematically dismantled a system of checks and balances, facilitating the consolidation of control by the Fidesz government, which is now in its fourth (third consecutive) term. This has included introducing significant changes to the legal framework for parliamentary elections;<sup>2</sup> stripping hundreds of faiths of their state recognition in 2011 and then channeling money to religious groups that do not challenge government positions (increasing dependence of those groups on the state); overseeing the consolidation of most Hungarian media, first into the hands of government-tied oligarchy and then into a single foundation exempt from anti-trust regulation; and eroding judicial independence by, for example, expanding and packing the constitutional court.<sup>3</sup>

In light of restrictions imposed on political opposition, faith organizations, the media and the judiciary, the role of Hungarian civil society in holding the government to account (by, for example, suing

the government for non-compliance with the Hungarian constitution or Hungary’s international legal commitments) has taken on heightened importance. At the same time, civil society organizations have become the targets of escalating rhetorical attacks and legislative restrictions, including laws that significantly lower the bar for what it takes to jail people who seek to exercise their freedoms of speech, assembly, and association.

Overt attacks on civil society began in 2013 in government-friendly media and escalated after Fidesz won a second supermajority (two-thirds of the seats in parliament) in the April 2014 elections. After Prime Minister Viktor Orban extolled the virtues of “illiberal states” and lauded China, Turkey, and Russia as “stars,”<sup>4</sup> authorities raided the offices of NGOs receiving funding from European Economic Area (EEA) members Norway, Iceland, and Liechtenstein and confiscated computers and other documents, including client files.<sup>5</sup> The investigation later also included organizations receiving funds

from Switzerland. The raids yielded no prosecutions, and the countries temporarily suspended assistance to Hungary over concerns about its crackdown on civil society.

The State Department's 2016 Country Report on Human Rights Practices observed that Hungarian "[s]enior government officials . . . continued the political smear campaign against human rights NGOs that began in 2013 and continued after the 2014 national elections."<sup>6</sup>

### **The Foreign Agent Law: Inspired by Russia, Proposed by Jobbik, Passed by Viktor Orban**

In 2012, Russia pioneered a model for restricting civil society organizations by classifying recipients of foreign funding as "foreign agents:" imposing burdensome, stigmatizing legal restrictions on civil society organizations and rhetorically targeting NGOs as traitors and threats to national security or the public welfare. In October 2013, the Hungarian extremist party *Jobbik* (an opposition party) proposed that Hungary adopt a Russian-style "foreign agent" law.<sup>7</sup>

In June 2017, the Orban-led government complied, adopting a law on "The Transparency of Organizations Receiving Foreign Funds," which was quickly criticized by the United States, Canada, Norway, and Germany.

The U.S. Embassy found that the law "unfairly burdens a targeted group of Hungarian civil society organizations, many of which focus on fighting corruption and protecting human rights and civil liberties." The Embassy and U.S. Department of State further argued that the law constitutes a step away from Hungary's commitments to the values and principles relating to freedom of speech and expression that are enshrined in its NATO, EU, and OSCE commitments.<sup>8</sup>

Hungary's foreign agent law classifies all Hungarian organizations receiving over 7.2 million Hungarian forints a year (roughly \$29,000) from non-Hungarian sources as "foreign funded." While EU funds channeled through the Hungarian Government are not subject to the law, EU money disbursed directly to civil society organizations is

### **OSCE Commitments**

In the 1975 Helsinki Final Act, the participating States recognized the rights of individuals to know and act upon their human rights. In the 1990 Copenhagen Document, they further agreed to allow members of such groups to receive voluntary financial contributions from national and international sources for the purpose of promoting and protecting human rights and fundamental freedoms.

classified as foreign funding and so regulated. Hungary, which joined the EU in 2004, receives substantial EU subsidies, estimated at 4.6 percent of GDP for 2015-2016.<sup>9</sup>

The law permits Hungary to dissolve organizations that fail to meet their procedural reporting obligations, although its putative purpose is to combat crimes such as money laundering and terrorist financing by ensuring funding transparency in civil society organizations.

Even before the adoption of the 2017 foreign agent law, Hungarian civil society organizations were required to publicly report their funding sources. They now must also brand themselves as "foreign funded" in all press products, reports and other publications, and online materials, and list their Hungarian and foreign donors. In practice, the law creates a register of "foreign funded" groups that stigmatizes listed organizations but does not actually provide any new information to the government. The registry and the government's rhetorical association of foreign-funded NGOs with threats to national sovereignty, illegal activity, and terror threats also may intimidate potential donors and curb NGOs' ability to raise domestic funds.

The law creates three content-based exemptions for associations: sports, religion, and ethnicity. The Orbán government prioritizes advancing sports as a policy, famously exemplified by the construction of a massive soccer stadium in the prime minister's small hometown.<sup>10</sup> A sports organization is exempt from the foreign agent law while an organization

investigating corruption in stadium construction is not.

The Orban government also prioritizes its blood-identity ties with ethnic Hungarians in other countries, and has extended Hungarian citizenship on this basis to citizens of neighboring states. Hungary funds ethnic Hungarian political parties, schools, sports organizations, media, cultural associations and churches in neighboring Romania, Serbia, Slovakia and Ukraine.

Like Russia,<sup>11</sup> Hungary has defended its law by suggesting it is analogous to the U.S. Foreign Agents Registration Law. After the Hungarian law was adopted, the U.S. Embassy observed, “Statements that this legislation is based on the Foreign Agents Registration Act (FARA) in the United States are false.”<sup>12</sup>

The European Center for Not-for-Profit Law reported that this was the first such law adopted in an EU country.<sup>13</sup> In 2016, the Slovak fascist party “Peoples Party – Our Slovakia” proposed a Russian-style foreign agent law.<sup>14</sup> In Romania, in response to mass anti-corruption protests in 2017, members of Romania’s Social Democratic Party proposed a foreign agent law similar to Hungary’s in an effort to quell dissent.<sup>15</sup> Neither of those proposed laws advanced.

A number of Hungarian human rights groups have said they will not comply with the law. Organizations that challenge the law in court must divert time, money, and other resources from their core missions.

### **Measures Restricting Freedom of Expression, Assembly**

Ahead of the April 2018 parliamentary elections, the government introduced a legislative package that was promoted as a group of measures to restrict NGOs allegedly working on migration but which included content-based criminal penalties for government disfavored speech.<sup>16</sup> While some observers viewed the legislative proposals as campaign hyperbole that might be dropped after the elections, the bills were passed after after Fidesz secured control of two-thirds of the seats in the parliament for the third consecutive time.

On June 20, 2018, Hungary passed the first part of this legislative package, which Fidesz officials referred to as “Stop Soros” legislation.<sup>17</sup> On its face, the new legislation criminalizes attempts by organizations and individuals to assist or support illegal immigration. However, the scope of the law extends to those helping asylum seekers file legal claims, monitoring human rights, and advocating for specific migration-related policies. Although framed as a measure to improve border security and combat human smuggling, the content-based speech penalties mean that distributors of know-your-rights leaflets could spend one year in prison and Hungarians who voice opposition to the government’s policies on immigration could face jail.

On July 20, 2018, Hungary passed a law imposing a 25 percent tax on financial support given to organizations engaged in “immigration supporting activities,” giving new meaning to the term “progressive tax.” According to the Department of State,<sup>18</sup> activities which render organizations subject to the tax include “conducting or participating in media campaigns and media seminars,” “organizing education,” “establishing or operating networks,” or “propaganda that paints immigration in a positive light.”

On July 20, the parliament also amended the law on assembly.<sup>19</sup> As other avenues of expressing dissent or criticism are closed by the government, demonstrations, usually focused on a single issue, remain one of the ways critics of government policies have moved the needle. A 2014 proposed tax on the internet and a 2018 proposal that would allow employers to delay overtime pay for up to three years were both dropped by the government after mass demonstrations.

In addition to banning demonstrations in front of the residences of public officials (following a protest organized in front of the prime minister’s residence), the law allows authorities to ban demonstrations based on their proposed location or date, while preserving the same space for state-organized events.<sup>20</sup> The new law was quickly used to ban a demonstration against visiting Turkish president Recep Tayyip Erdoğan.<sup>21</sup>

### **Intimidation Escalates: Surveillance and Enemies Lists**

Beyond legislative restrictions, civil society in Hungary faces other forms of intimidation. Prior to the 2018 elections, several NGOs were the target of a sting operation apparently intended to entrap them into making discrediting statements.<sup>22</sup> The effort failed to produce revelations about the targeted organizations. However, the dissemination of surveillance tapes illustrated that significant resources were marshaled in multiple countries (including the United States) in the effort to discredit them and demonstrated a new level of intimidation.<sup>23</sup>

Shortly after the elections, a publication owned by a close-to-Orban loyalist published an enemies list of 200 names, which Prime Minister Orban subsequently endorsed. That list included more than two dozen Americans, including Professor Cole Durham of Brigham Young University, an expert on religious liberties who has served as an advisor on that subject for the OSCE, numerous journalists,<sup>24</sup> as well as the minister of economics from Orban's first government.<sup>25</sup>

Also after the elections, a number of NGO offices were “tagged” with stickers or spray paint identifying them as “pro-migration.” The premises of Aurora, a Jewish community center that provides space to other civil society groups, was attacked and vandalized in September and October 2019 after previously being “tagged.”<sup>26</sup>

### **Conclusion**

There are no political prisoners in Hungary and dissidents aren't murdered for their religious views, political activity, or independent reporting. However, fines, threats of imprisonment, spurious legal charges, office searches and seizure of computers and documents, abusive use of the state tax authority, smear campaigns, and other forms of harassment are used to intimidate independent and critical voices. Even without imprisonment or violence, these tools have produced the intended affect: fear.

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## **About the Helsinki Commission**

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent commission of the U.S. Government charged with monitoring compliance with the Helsinki Accords and advancing comprehensive security through promotion of human rights, democracy, and economic, environmental, and military cooperation in 57 countries. The Commission consists of nine members from the U.S. Senate, nine from the House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

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<sup>1</sup> Lyudmila Alexeyeva, "In Russia, Human Rights Groups Need Western Aid More Than Ever," *Washington Post*, February 24, 2016, [https://www.washingtonpost.com/opinions/in-russia-human-rights-groups-need-western-aid-more-than-ever/2016/02/24/b8e934d2-d1c0-11e5-b2bc-988409ee911b\\_story.html](https://www.washingtonpost.com/opinions/in-russia-human-rights-groups-need-western-aid-more-than-ever/2016/02/24/b8e934d2-d1c0-11e5-b2bc-988409ee911b_story.html).

<sup>2</sup> See the reports of the OSCE on elections in Hungary, <https://www.osce.org/odihr/elections/hungary>, particularly the final report on the 2014 elections.

<sup>3</sup> In November 2019, disciplinary proceedings were launched against Judge Csaba Vasvári in retaliation for asking the European Court of Justice for a ruling regarding the independence of the judiciary in Hungary. "Hungary: disciplinary action against judge for recourse to EU Court must cease," International Commission of Jurists, November 18, 2019, <https://www.icj.org/hungary-disciplinary-action-against-judge-for-recourse-to-eu-court-must-cease/>

<sup>4</sup> Prime Minister Viktor Orbán's speech at the 29th Bálványos Summer Open University and Student Camp, July 29, 2018, <https://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-29th-balvanyos-summer-open-university-and-student-camp>.

<sup>5</sup> Timeline Of Governmental Attacks Against Hungarian Civil Society Organisations, Joint Document of the Eötvös Károly Policy Institute – Mérték Media Monitor – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor, November 17, 2017, [http://www.helsinki.hu/wp-content/uploads/Timeline\\_of\\_gov\\_attacks\\_against\\_HU\\_NGOs\\_17112017.pdf](http://www.helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_17112017.pdf).

<sup>6</sup> 2016 Country Reports on Human Rights Practices: Hungary, Department of State, <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/hungary/>.

<sup>7</sup> "Gyongyosi also told me that Jobbik had gone Orban one better on NGOs, submitting a bill that would require groups that receive funding from abroad to be labeled 'foreign agents,' as they are in Russia. I asked if he was accusing such groups of being traitors. 'Absolutely,' said this dapper gentleman in a fine navy suit." James Traub, "Viktor Orban Wades into Hungary's Dark Waters," *Foreign Policy*, October 26, 2015.

<sup>8</sup> Heather Nauert, Department of State Spokesperson, "Statement on Government of Hungary's Legislation Impacting Non-Governmental Organizations," June 19, 2017, <https://hu.usembassy.gov/kozlemeny-magyar-kormany-civil-szervezeteket-sujto-torvenyerol/>.

<sup>9</sup> Dalibor Rohac, "Developments in Hungary," briefing of the Commission on Security and Cooperation in Europe, April 9, 2019, <https://www.csce.gov/sites/helsinkicommission.house.gov/files/unofficial-transcript/Unofficial%20Transcript%20FOR%20WEB%20Developments%20in%20Hungary%20.pdf>. See also Tamara Kovacevic, "EU budget: Who pays most in and who gets most back?," *BBC Reality Check*, May 28, 2019

<https://www.bbc.com/news/uk-politics-48256318>; Selam Gebrekidan, Matt Apuzzo and Benjamin Novak, "The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions," *The New York Times*, Nov. 3, 2019, <https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html>.

<sup>10</sup> See: Danny Hakim, "A Village Stadium Is a Symbol of Power for Hungary's Premier," *The New York Times*, April 3, 2014, <https://www.nytimes.com/2014/04/04/business/international/the-village-stadium-a-symbol-of-power-for-hungarys-premier.html?r=0>; Patrick Kingsley and Benjamin Novak, "In Hungary, Viktor Orban Showers Money on Stadiums, Less So on Hospitals," *The New York Times*, October 26, 2019 <https://www.nytimes.com/2019/10/26/world/europe/viktor-orban-soccer-health-care.html>

<sup>11</sup> Russia frequently asserts that its foreign agent law is essentially the same as the U.S. Foreign Agents Registration Act (FARA), a 1938 law that *only* applies to persons who act specifically on behalf of a foreign principal. The United States has regularly rebutted this mischaracterization through its Embassy in Moscow, U.S. Mission to the OSCE, and elsewhere. See also Samantha Laufer, "A Difference in Approach: Comparing the US Foreign Agents Registration Act with Other Laws Targeting Internationally Funded Civil Society," *The International Journal of Not-for-Profit Law*, 19, No. 1 (April 2017), <http://www.icnl.org/research/journal/vol19iss1/index.html>.

<sup>12</sup> Heather Nauert, Department of State Spokesperson, "Statement on Government of Hungary's Legislation Impacting Non-Governmental Organizations," June 19, 2017, <https://hu.usembassy.gov/kozlemeny-magyar-kormany-civil-szervezeteket-sujto-torvenyerol/>.

<sup>13</sup> "Hungarian Law On The Transparency Of Organisations Supported From Abroad: What Is At Stake?," briefing paper by the European Center for Not-for-Profit Law, June 15, 2017, <http://ecnl.org/wp-content/uploads/2017/06/ECNL-briefer-on-Hungarys-Lex-NGO.pdf>.

<sup>14</sup> Slovakia Country Profile, Nations in Transit 2018, Freedom House, <https://freedomhouse.org/report/nations-transit/2018/slovakia>

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- <sup>15</sup> “Is Romania starting to persecute its NGOs as well?,” Joint Protest by APADOR-CH, Asociația pentru Apărarea Drepturilor Omului în România, Comitetul Helsinki/ The Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH) and other organizations, June 8, 2017, <http://www.apador.org/en/psd-vrea-sa-transparentizeze-urgent-ong-urile-sau-sa-le-desfiinteze/>;
- <sup>16</sup> The relevant reports on the draft laws, issued jointly by the Council of Europe’s Venice Commission on Democracy through Law and the OSCE Office for Democratic Institutions and Human Rights, are here: [https://www.venice.coe.int/webforms/documents/by\\_opinion.aspx?country=17](https://www.venice.coe.int/webforms/documents/by_opinion.aspx?country=17).
- <sup>17</sup> Vanessa Romo, “Hungary Passes ‘Stop Soros’ Laws, Bans Aid To Undocumented Immigrants,” *National Public Radio (U.S.)*, June 20, 2018, <https://www.npr.org/2018/06/20/622045753/hungary-passes-stop-soros-laws-bans-aid-to-undocumented-immigrants>.
- <sup>18</sup> 2018 Country Reports on Human Rights Practices: Hungary, Department of State, <https://www.state.gov/wp-content/uploads/2019/03/HUNGARY-2018-HUMAN-RIGHTS-REPORT.pdf>
- <sup>19</sup> 2018 Country Reports on Human Rights Practices: Hungary, Department of State, <https://www.state.gov/wp-content/uploads/2019/03/HUNGARY-2018-HUMAN-RIGHTS-REPORT.pdf>.
- <sup>20</sup> In Hungary, demonstrations are frequently organized on historic dates (e.g., March 15, October 23) and in locations with significant meaning (Chain Bridge, Kossuth Square).
- <sup>21</sup> Hungary Country Profile, Nations in Transit 2019, Freedom House, <https://freedomhouse.org/report/freedom-world/2019/hungary>
- <sup>22</sup> Lili Bayer, “Israeli intelligence firm targeted NGOs during Hungary’s election campaign,” *Politico*, April 19, 2018, <https://www.politico.eu/article/viktor-orban-israeli-intelligence-firm-targeted-ngos-during-hungarys-election-campaign-george-soros/>.
- <sup>23</sup> Shaun Walker, “Sting operations and war on migration help Orbán to victory,” *The Guardian*, April 14, 2018, <https://www.theguardian.com/world/2018/apr/14/viktor-orban-hungary-election-rundercover-stings-orban-secret-war-on-migration>.
- <sup>24</sup> “OSCE media freedom representative Désir condemns blacklisting of journalists in Hungary,” April 13, 2018, <https://www.osce.org/representative-on-freedom-of-media/377776>.
- <sup>25</sup> Keno Verseck, “Hungary’s Viktor Orban targets critics with ‘Soros mercenaries’ blacklist,” *Deutsche Welle*, April 13, 2018, <https://www.dw.com/en/hungarys-viktor-orban-targets-critics-with-soros-mercenaries-blacklist/a-43381963>.
- <sup>26</sup> “Hastings and Cardin Condemn Mob Attack on Budapest Community Center,” Press release, Commission on Security and Cooperation in Europe, October 25, 2019, <https://www.csce.gov/international-impact/press-and-media/press-releases/hastings-and-cardin-condemn-mob-attack-budapest>.